

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF: OLD)
ROOSEVELT FIELD CONTAMINATED)
GROUNDWATER AREA SITE)
)
TREELINE GARDEN CITY PLAZA LLC,)
)
Settling Respondent.)
)
UNDER THE AUTHORITY OF THE)
COMPREHENSIVE ENVIRONMENTAL)
RESPONSE, COMPENSATION, AND)
LIABILITY ACT OF 1980, 42 U.S.C.)
§ 9601, et seq., as amended.)
)

CERCLA-02-2001-2010
AGREEMENT AND COVENANT
NOT TO SUE

I. INTRODUCTION

This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States on behalf of the Environmental Protection Agency ("EPA") and Treeline Garden City Plaza LLC ("Treeline" or "Settling Respondent").

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

Treeline, the prospective purchaser of the Subject Property as defined below, is a Delaware limited liability company with its principal place of business located in Carle Place, New York. Treeline intends to acquire the Subject Property, located at 100, 200 and 300 Ring Road, Garden City, New York, and to continue to operate the buildings on the Subject Property as commercial office space.



The Old Roosevelt Field Contaminated Ground Water Area Superfund Site (the "Site") includes a contaminated groundwater plume located in Garden City, New York. The plume, which according to EPA's current data runs underneath the Subject Property, is generally located east of Clinton Road and south of the intersection of Clinton Road and Old Country Road. This intersection was the former northwest corner of the Roosevelt Field (the "Airfield"), which was used for aviation activities from about 1911 until May, 1951 both by U.S. military and civilian commercial entities. On or about May 11, 2000, EPA included the Site on the National Priorities List, which was established pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to the reservations and limitations contained in Sections VIII, IX, X, and XI, the potential liability of the Settling Respondent for the Existing Contamination at the Subject Property which would otherwise result from Settling Respondent becoming the owner of the Subject Property.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
2. "Existing Contamination" shall mean:
 - a. any hazardous substances, pollutants or contaminants present or existing on or under the Subject Property as of the effective date of this Agreement;
 - b. any hazardous substances, pollutants or contaminants that migrated from the Subject Property prior to the effective date of this Agreement; and
 - c. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Subject Property after the effective date of this Agreement.
3. "Institutional Controls" shall mean deed restrictions and other requirements and controls developed for one or more of the following purposes: (i) to limit human or animal exposure to hazardous substances at or concerning the Site; (ii) to ensure non-interference with the performance of response actions at or concerning the Site; and (iii) to ensure the integrity and effectiveness of the response actions at or concerning the Site.
4. "Parties" shall mean the United States on behalf of EPA and the Settling Respondent.
5. "Subject Property" shall mean that portion of the Site which is located at 100, 200 and 300 Ring Road, Garden City, County of Nassau, New York, known on the tax map of Nassau County as Section 44, Block 77, Lots 8B, 8D, 11B, 11C, 12A, 12B, 49 and 52. The Subject Property is generally depicted in Exhibit 1 of this Agreement.
6. "Settling Respondent" or "Treeline" shall mean Treeline Garden City Plaza LLC.
7. "Site" shall mean the Old Roosevelt Field Contaminated Ground Water Area Superfund Site, which includes a contaminated groundwater plume generally located on the eastern

side of Clinton Road south of the intersection with Old Country Road, Garden City, New York, including the groundwater under the Subject Property.

8. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

9. The Site includes a contaminated groundwater plume, generally located on the eastern side of Clinton Road and south of the intersection with Old Country Road, located in Garden City, Nassau County, New York. The current areal extent of the plume measures approximately 5,000 feet in length and 2,000 feet in width (its volume is unknown), and extends into the area of the former Airfield.
10. Following discontinuation of aviation activities, the area was developed for commercial use and is now occupied by, among other things, Roosevelt Field Mall and commercial office buildings.
11. Commercial office buildings were constructed on the Subject Property in the 1970s and 1980s. The three buildings on the Subject Property continue to be occupied by professional and other non-industrial tenants.
12. Concentrations of several volatile organic compounds ("VOCs"), such as carbon tetrachloride, 1,1-dichloroethene ("1,1-DCE"), tetrachloroethene ("PCE"), and trichloroethene ("TCE") were found to exceed drinking water standards in Garden City public supply wells No. 10 and No. 11, which are located in the southwestern corner of the former Airfield.
13. Historically, the highest levels of TCE have been detected in former cooling water well N8050 located north-northeast of Garden City public supply wells No. 10 and No. 11 and the Subject Property.

14. The Subject Property is located south and downgradient of former cooling water well N8050 and north of Garden City public supply wells 10 and 11.
15. VOCs have been detected in wells throughout the Site including two non-contact cooling water wells located at the Subject Property. The non-contact cooling water wells were closed under the supervision of the New York State Department of Environmental Conservation following the discovery of TCE, PCE and 1,1 DCE in discharge from the wells. Historic analyses of data from wells in the area performed by the New York State Department of Health and the U.S. Geological Survey show the presence of these contaminants in groundwater beneath the Subject Property to be consistent with the area-wide groundwater contamination and flow as affected by pumping wells throughout the Site. One cooling water well (93-11), located on the Subject Property, has shown thus far the second highest level of VOC's at the Site.
16. The Settling Respondent represents, and for the purposes of this Agreement EPA relies on those representations, that Settling Respondent's involvement with the Subject Property and the Site has been limited to the following:
 - a. evaluating the Subject Property for purposes of purchasing the Subject Property; and
 - b. negotiating to purchase the Subject Property.

IV. PAYMENT

17. In consideration of and in exchange for the United States' Covenant Not to Sue in Section IX herein, Settling Respondent shall pay to EPA via electronic funds transfer ("EFT") the sum of \$ 400,000 within thirty (30) days of the effective date of this Agreement. The total amount to be paid by Settling Respondent to EPA pursuant to this Agreement shall be deposited in the Old Roosevelt Field

Contaminated Groundwater Area Site Special Account within the Hazardous Substance Superfund to fund or finance future response actions at the Site. To effect payment via EFT, Settling Respondent shall instruct its bank to remit payment in the required amount via EFT to EPA's account with Mellon Bank, Pittsburgh, Pennsylvania, and shall provide the following information to its bank:

Amount of payment: **\$400,000**

Title of Mellon Bank account to receive the payment: **EPA**

Account code for Mellon Bank account receiving the payment: **9108544**

Mellon Bank ABA Routing Number: **043000261**

Name of remitter: **Treeline Garden City Plaza LLC**

Agreement Index number: **CERCLA-02-2001-2010**

Site/spill identifier: **02-PE**

Settling Respondent shall send a letter, within one week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the index number of this Agreement, and Settling Respondent's name and address to:

Michael Negrelli, Remedial Project Manager
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region II
290 Broadway, 20th Floor
New York, New York 10007-1866

as well as to:

Elizabeth Leilani Davis, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region II
290 Broadway, 17th Floor
New York, N.Y. 10007-1866

and

Ronald Gherardi
Financial Management Branch
U.S. Environmental Protection Agency
290 Broadway, 29th Floor
New York, New York 10007-1866

18. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. ACCESS/INSTITUTIONAL CONTROLS

19. Commencing upon the date that it acquires title to the Subject Property, Settling Respondent agrees to provide to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Subject Property and to any other property to which access is required for the implementation of response actions at the Site (to the extent access to such other property is controlled by the Settling Respondent) for the purposes of performing and overseeing response actions at the Site under federal law. EPA agrees to provide reasonable notice to the Settling Respondent of the timing of response actions to be undertaken at the Subject Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), 42

U.S.C. § 6901, et seq., and any other applicable statute or regulation, including any amendments thereto.

20. Commencing on the date when Settling Respondent acquires title to the Subject Property, Settling Respondent shall refrain from installing or using any groundwater wells at the Subject Property without prior EPA approval. Furthermore, Settling Respondent shall refrain from using the Subject Property in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial actions or removal actions that are selected by EPA to be implemented, or are implemented, at the Site including any Institutional Controls which are determined by EPA to be appropriate at the Site.
21. If EPA so requests, Settling Respondent shall timely execute and record in the Registry of Deeds of Nassau County, State of New York, an easement, running with the land, that grants a right of access for the purpose of conducting any response activity related to the Subject Property and/or grants the right to enforce the land/water use restrictions mandated under Paragraph 20 above (or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial actions or removal actions that are selected by EPA to be implemented at the Site). Settling Respondent shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State of New York and its representatives, (iii) one or more potentially responsible parties and their representatives, and/or (iv) other appropriate grantees. Settling Respondent shall, within 45 days of EPA's request,

submit the following to EPA for review and approval with respect to the Subject Property:

- a. a draft easement that is enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and
- b. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, Settling Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Registry of Deeds of Nassau County, New York. Within 30 days of recording the easement, Settling Respondent shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

- 22. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement a remedial or removal action which is selected by EPA for the Subject Property, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Respondent shall cooperate with EPA's efforts to secure such governmental controls.

23. Notwithstanding any provision of this Agreement, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

VI. NOTICE TO SUCCESSORS IN INTEREST

24. With respect to the Subject Property, within 15 days after the effective date of this Agreement the Settling Respondent shall submit to EPA for review and approval a notice to be filed with the Registry of Deeds, Nassau County, State of New York, which shall provide notice to all successors-in-interest that this Agreement exists and that the Subject Property is included in the Site. Such notice shall identify the Index Number of this Agreement (CERCLA-02-2001-2010) and the date that this Agreement became effective. Settling Respondent shall record the notice within ten (10) days of EPA's approval of the notice. Settling Respondent shall provide EPA with a certified copy of the recorded notice within 10 days of recording such notice.
25. The Settling Respondent shall ensure that all assignees, successors in interest, lessees, and sublessees of the Subject Property comply with all the requirements of Sections V (Access/Institutional Controls) and VII (Due Care/Cooperation) of this Agreement. The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee of the Subject Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Subject Property or an interest in the Subject Property are consistent with this Section, and Section XII (Parties Bound/Transfer of Covenant) of the Agreement.

26. At least thirty (30) days prior to any conveyance by Settling Respondent of any interest in the Subject Property, including fee interests, leasehold interests, and mortgage interests, Settling Respondent shall provide the following: (i) to the recipient of the proposed interest, a written notice and copy of: (A) this Agreement, (B) any instrument by which an interest in real property has been conveyed that confers a right of access to the Subject Property pursuant to Section V (Access/Institutional Controls), and (C) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use or enjoyment of such property pursuant to Section V (Access/Institutional Controls); and (ii) to EPA, written notice of the proposed conveyance, including the name and address of the intended recipient of the interest, and the date on which notice of the above was given to the intended recipient of the interest in such property.

VII. DUE CARE/COOPERATION

27. a. The Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations.
- b. i. Within 30 days of the effective date of this Agreement, Settling Respondent shall submit to EPA for review a Subject Property Health and Safety Plan. This plan shall set forth procedures Settling Respondent (and its lessees and sublessees) will follow in conducting soil excavations at the Subject Property. The plan shall, among other things, contain provisions regarding the need for soil sampling, analysis and disposal, and shall be consistent with subparagraph b.iii. below.

The plan shall also allow for streamlined procedures to be followed, as necessary, in the event that an excavation is needed on an emergency basis to, for example, repair basic utilities servicing the buildings on the Subject Property, and for minor excavations in connection with landscaping or other cosmetic changes. EPA will review the Subject Property Health and Safety Plan and either approve it or notify Settling Respondent of changes that need to be made to the Plan. If EPA, in its sole discretion, notifies Settling Respondent that such changes need to be made, Settling Respondent shall revise the Subject Property Health and Safety Plan accordingly and resubmit it to EPA within thirty (30) days of EPA's notice to Settling Respondent.

- ii. In the event that any soil excavation is to be conducted at or on the Subject Property (other than excavation of an emergency or cosmetic nature, which will be addressed in the Subject Property Health and Safety Plan using streamlined procedures) by or on behalf of Settling Respondent or a lessee or sublessee of Settling Respondent, Settling Respondent shall so notify EPA in writing, consistent with Section XVI below, at least thirty (30) days prior to such excavation. Such notification shall show the specific location(s) at the Subject Property where excavation is to occur and describe the purpose and the planned lateral and vertical extent of the excavation. In the event of any emergency that necessitates excavation at the Subject Property, Settling Respondent shall (A) notify EPA of the emergency as soon as

practicable but in no case more than 48 hours after Settling Respondent becomes aware of the emergency and (B) limit the extent and duration of the excavation to the minimum necessary to adequately respond to the emergency.

iii. In conducting any soil excavation at or on the Subject Property (other than excavation of an emergency or cosmetic nature, which will be addressed in the Subject Property Health and Safety Plan using streamlined procedures) Settling Respondent shall use (or ensure that its lessee or sublessee uses) a photo ionization detector ("PID"), or similar device, to monitor for the presence of VOCs. Such PID readings shall be taken continuously to screen for the presence of VOCs during any groundbreaking activities at the Subject Property. Once excavation activities are underway, PID readings shall be taken every 15 minutes, or more frequently, in the area of the excavation, until the cessation of any and all excavation activities. A background PID reading should be taken prior to any excavation to ensure non-interference from any nearby sources. In the event of any PID readings of 25 parts per million ("ppm") or greater above the background reading, Settling Respondent shall implement (or ensure that its lessee or sublessee implements) the EPA-approved Subject Property Health and Safety Plan.

iv. The requirements of subparagraphs b.i. through b.iii. above shall remain in effect unless and until EPA determines, based on further

investigation of the Site and the implementation of EPA-authorized remediation measures on the Subject Property, if any, that such requirements may be terminated. If EPA determines based on soil sampling data that are collected with regard to the Subject Property that no soil excavation should be conducted by or on behalf of Settling Respondent (or its lessees or sublessees), EPA will so notify Settling Respondent, who shall comply with (and ensure that its lessees and sublessees comply with) such direction. Nothing in this Agreement should be construed as a waiver of any federal, state or local requirements that may apply with respect to any excavation or other activities that may be conducted at the Subject Property.

- c. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with the Settling Respondent's use of the Subject Property, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees that by such entry and response, and consistent with its responsibilities under applicable law, it will use reasonable efforts to minimize any interference with the Settling Respondent's operations and to prevent material impairment of the use of the Subject Property for commercial office space. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or

from the Subject Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

VIII. CERTIFICATION

28. By entering into this agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Settling Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

IX. UNITED STATES' COVENANT NOT TO SUE

29. Subject to the Reservation of Rights in Section X of this Agreement, upon payment of the amount specified in Section IV (Payment) of this Agreement, the United States covenants not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), with respect to the Existing Contamination.

X. RESERVATION OF RIGHTS

30. The covenant not to sue set forth in Section IX above does not pertain to any matters other than those expressly specified in Section IX (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Institutional Controls), Section VI (Notice to Successors in Interest), Section VII (Due Care/Cooperation) and Section XV (Payment of Litigation and Enforcement Costs);

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;

(c) any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

(d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

(g) liability for violations of local, State or federal law or regulations.

31. With respect to any claim or cause of action asserted by the United States, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.
32. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA and the United States may have against any person, firm, corporation or other entity not a party to this Agreement.
33. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA.

in exercising its authority under federal law. Settling Respondent acknowledges that it is purchasing property where response actions may be required.

XI. SETTLING RESPONDENT'S COVENANT NOT TO SUE

34. In consideration of the United States' Covenant Not To Sue in Section IX of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities, or any claims arising from the selection or implementation of Institutional Controls required by EPA at the Site.
35. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute pre-authorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XII. PARTIES BOUND/TRANSFER OF COVENANT

36. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding upon the Settling Respondent, its officers, directors, and employees. The United States' Covenant Not to Sue in Section IX and Contribution Protection in Section XIX shall apply to Settling Respondent's officers, directors, or employees to the extent that the alleged liability of the officer, director, or employee is based on his/her status and in his/her capacity as an officer, director, or employee of Settling Respondent, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondent. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.
37. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion.
38. The Settling Respondent agrees to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.
39. In the event of an assignment or transfer of the Subject Property or an assignment or transfer of any interest in the Subject Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Subject Property, the assignee or transferee must consent in writing to be bound by the terms

of this Agreement including but not limited to the certification requirement in Section VIII of this Agreement in order for the Covenant Not to Sue in Section IX to be available to that party. The Covenant Not To Sue in Section IX shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

XIII. DISCLAIMER

40. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Subject Property or the Site nor constitutes any representation by EPA that the Subject Property or the Site is fit for any particular purpose.

XIV. DOCUMENT RETENTION

41. The Settling Respondent agrees to retain and make available to EPA all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Subject Property, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XV. PAYMENT OF LITIGATION AND ENFORCEMENT COSTS

42. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment) and Section V (Access/Institutional Controls) of this Agreement, it shall be liable for all litigation and other enforcement costs,

including, but not limited, attorney time, incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XVI. NOTICES AND SUBMISSIONS

43. The Parties designate the following addressees for the delivery of notices and submissions:

As to EPA:

Michael J. Negrelli, Remedial Project Manager
New York Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
290 Broadway
New York, New York 10007-1866

with a copy to:

Elizabeth Leilani Davis, Esq.
New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway
New York, New York 10007-1866

As to the Settling Respondent:

Treeline Garden City Plaza LLC
c/o C. Glenn Schor, Esq.
1 Old Country Road
Carle Place, New York 11514

David W. Reger, Esq.
Bressler, Amery & Ross, P.C.
325 Columbia Turnpike
Florham Park, New Jersey 07932

XVII. EFFECTIVE DATE

44. The effective date of this Agreement shall be the later of, the date upon which EPA issues written notice to the Settling Respondent that EPA has fully executed the Agreement after review of and response to any public comments received, or the date that Settling Respondent acquires title to the Subject Property. Settling Respondent shall notify EPA within seven (7) days of acquiring title to the Subject Property.

XVIII. TERMINATION

45. If any Party believes that any or all of the obligations under Section V (Access/Institutional Controls) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XIX. CONTRIBUTION PROTECTION

46. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

47. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.
48. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on them.

XX. EXHIBITS

49. Exhibit 1 is a map generally depicting the Subject Property.


XXI. PUBLIC COMMENT

50. This Agreement shall be subject to a fifteen-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:



Jeanne Fox
Regional Administrator, Region II
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

12/21/00
Date

effective date 01/17/01

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

Lois Schiffer,
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

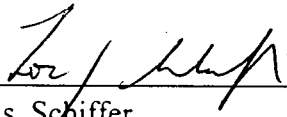
Jeanne Fox
Regional Administrator, Region II
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

Date

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

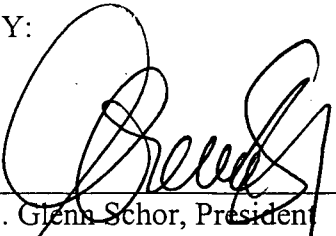
 12/19/00

Lois Schiffer,
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date

IT IS SO AGREED:
TREELINE GARDEN CITY PLAZA LLC

BY:



C. Glenn Schor, President

EXHIBIT 1



= SUBJECT PROPERTY

PROPERTY DIAGRAM

